

Message

From: MacDonald, Jennifer [Macdonald.Jennifer@epa.gov]
Sent: 1/15/2021 4:03:03 AM
To: Fleming, Sheila [fleming.sheila@epa.gov]
Subject: FW: Inquiry on status of Nez Perce Tribe's FOIA requests

FYI.

Jennifer G. MacDonald, Senior Info. Law Attorney
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
206-553-8311
MacDonald.Jennifer@epa.gov

From: Mike Lopez <mlopez@nezperce.org>
Sent: Friday, January 8, 2021 4:14 PM
To: MacDonald, Jennifer <Macdonald.Jennifer@epa.gov>
Cc: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Inquiry on status of Nez Perce Tribe's FOIA requests

Good afternoon Jennifer,

I am contacting you regarding the status of two FOIA requests that I submitted to Region 10 on August 5, 2020, and November 18, 2020, on behalf of the Nez Perce Tribe. I have not received any documents in response to either request. I asked Elizabeth McKenna, Assistant Regional Counsel, why the delay has occurred and she referred me to you on this inquiry.

On September 8, 2020, Ms. McKenna contacted me to confirm the scope of my August 5, 2020, request. I responded that the written request clearly and unambiguously reflected the scope as "May 30, 2019 to the present." Ms. McKenna agreed and thanked me for the call. On September 15, 2020, however, I received a letter from Region 10 stating that the August 5, 2020, request was on hold until I "confirm that it is your intention" to limit the request to responsive records after May 29, 2020. In response to this letter, I contacted Ms. McKenna and again clarified the scope of the request.

Despite these communications, I have received no documents to date in response to either the August 5 or November 18, 2020, requests. In a January 5, 2020, telephone call between Nez Perce Tribal Chairman Shannon Wheeler and Region 10 Administrator Chris Hladick, Chairman Wheeler asked about the status of the Nez Perce Tribe's FOIA requests. Mr. Hladick responded that he had learned that morning that EPA had "lost" or "misplaced" the Tribe's FOIA requests and "didn't know what happened." Mr. Hladick assured Chairman Wheeler that the request was being processed and the responsive documents would be released that or the following day. This has not occurred.

As you may be aware, the Nez Perce Tribe is scheduled to consult government-to-government with the EPA's Washington Office and Region 10 on Tuesday, January 12, 2020, regarding the Administrative Settlement Agreement Order on Consent ASAOC for the Stibnite Site ("ASAOC"). The subject matter of the Nez Perce Tribe's FOIA requests directly concerns EPA's activities and interactions with other parties concerning the ASAOC. The Nez Perce Tribe was obligated to provide EPA with comments on the ASAOC in November and December of 2020, without the information it asked for in the FOIA requests.

The Nez Perce Tribe is deeply troubled by EPA's failure to provide the Nez Perce Tribe with the requested documents in a timely and responsible manner. EPA's inaction harms the Nez Perce Tribe's ability to provide full and meaningful input on the ASAOC and to have a full and informed discussion at the upcoming government-to-government consultation, as required under applicable executive orders and EPA regulations.

In light of the Nez Perce Tribe's consultation with EPA on Tuesday, and consistent with the agency's trust obligations to the Nez Perce Tribe, I request that EPA take action – prior to Tuesday's meeting – to make available for the Nez Perce Tribe's inspection all documents responsive to the FOIA requests.

Thanks you and please contact me with any questions.

Kind regards,

Mike

Michael Lopez
Senior Staff Attorney
Office of Legal Counsel
Nez Perce Tribe
P.O. Box 305
Lapwai, Idaho 83540
208-843-7355
mlopez@nezperce.org

This email is intended only for the use of the individual(s) or entity(ies) to whom it is addressed and may contain confidential, privileged information. If you are not the intended recipient, please be advised that any use, dissemination, distribution, copying or the taking of any action in reliance on the contents of this transmission is strictly prohibited. If you have received this email in error, please immediately notify the sender electronically, return the email to the above email address and delete it permanently from your files. Thank you.

Circular 230 Disclaimer – To ensure compliance with the requirements imposed by the US Internal Revenue Service, we inform you that any tax advice contained in this communication (including any attachments) unless expressly stated otherwise, is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related or other penalties that may be imposed under the Internal Revenue Code or applicable state or local tax law or (ii) promoting, marketing or recommending to another party any tax-related matter(s) addressed herein.